

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA

MINUTE ORDER

DATE: 08/22/2014

TIME: 01:52:00 PM

DEPT: 20

JUDICIAL OFFICER PRESIDING: Tari Cody

CLERK: Christine Schaffels

REPORTER/ERM:

CASE NO: **56-2014-00453806-CU-PA-VTA**

CASE TITLE: **Lindsay vs. Christian**

CASE CATEGORY: Civil - Unlimited

CASE TYPE: PI/PD/WD - Auto

EVENT TYPE: Ruling on Submitted Matter

APPEARANCES

The Court, having previously taken the Motion to Strike (8/15/14) under submission, now rules as follows:

Defendants' Motion to Strike the Punitive Damages as to Defendant Drew Christian is denied and as to Defendant Drew Christian Construction, Inc. is granted with leave to amend on before September 8, 2014.

The motion to strike the claim for prejudgment interest is granted.

In *Gombos v. Ashe* (1958) 158 Cal.App.2d 517, 526 (*Gombos*) it was held that: "One who becomes intoxicated, knowing that he intends to drive his automobile on the highway, is of course negligent, and perhaps grossly negligent. It is a reckless and wrongful and illegal thing to do. But it is not a malicious act." (*Gombos, supra*, 158 Cal.App.2d at 527.)

Taylor v. Superior Court (1979) 24 Cal.3d 890, (*Taylor*) disapproved this holding and found that allegations which established a conscious disregard for the safety of others (as opposed to an intent to injure or harm) were sufficient to support a claim for punitive damages. *Taylor* explained that a plaintiff is not required to allege or prove an actual intent to cause harm. A plaintiff need only prove that the defendant was aware of the probable dangerous consequences of his conduct, and that he wilfully and deliberately failed to avoid those consequences thus demonstrating a conscious disregard of the safety of others which constitutes malice. (*Id.* at 895-96.)

In discussing *Gombos*, the *Taylor* court stated:

"Yet the essence of the *Gombos* and present complaints remains the same: Defendant became

intoxicated and thereafter drove a car while in that condition, despite his knowledge of the safety hazard he created thereby. This is the essential gravamen of the complaint, and while a history of prior arrests, convictions and mishaps may heighten the probability and foreseeability of an accident, we do not deem these aggravating factors essential prerequisites to the assessment of punitive damages in drunk driving cases."
(*Taylor* 24 Cal.3d at 896.)

Taylor further explained its ruling as follows:

"There is a very commonly understood risk which attends every motor vehicle driver who is intoxicated. [Citation.] One who wilfully consumes alcoholic beverages to the point of intoxication, knowing that he thereafter must operate a motor vehicle, thereby combining sharply impaired physical and mental faculties with a vehicle capable of great force and speed, reasonably may be held to exhibit a conscious disregard of the safety of others. The effect may be lethal whether or not the driver had a prior history of drunk driving incidents."
(*Id.* at 897.)

Taylor sums up its holding as follows:

"one who voluntarily commences, and thereafter continues, to consume alcoholic beverages to the point of intoxication, knowing from the outset that he must thereafter operate a motor vehicle demonstrates, in the words of Dean Prosser, 'such a conscious and deliberate disregard of the interests of others that his conduct may be called wilful or wanton.'" (*Id.* at 899 (citation omitted).)

Civil Code section 3294(c)(1) was amended in 1988 to add the requirement that the conduct must also be "despicable." Despicable conduct has been described as "having the character of outrage frequently associated with crime." (*Tomaselli v. Transamerica Ins. Co.* (1994) 25 CA3d 1269, 1286 (parentheses and internal quotes omitted).) The statute was also amended to change to burden of proof for punitive damages to clear and convincing. "The clear and convincing standard " 'requires a finding of high probability " 'so clear as to leave no substantial doubt'; 'sufficiently strong to command the unhesitating assent of every reasonable mind.' " [Citation.] [Citations.]" (*Lackner v. North* (2006) 135 Cal.App.4th 1188, 1211–1212.)

No reported case has considered whether driving while intoxicated is "despicable" conduct.

Defendant contends that the 1988 amendments effectively reinstated *Gombos* and thus the requirement that the plaintiff must allege that the defendant acted with the intent to harm. But there is no authority for this claim. Moreover, if the legislature had intended to require that a defendant intended to harm the plaintiff, it could have clearly so stated by deleting the language in section 3294 that authorizes punitive damages for conduct which is carried on by the defendant with a *willful and conscious disregard of the rights or safety of others*. (See, Civ. C. §3294(c)(1) and (c)(2).)

Driving while intoxicated can be considered "despicable" conduct. It is a crime. Further, allegations that Defendant fled the scene at the time of the accident is direct evidence of a "wanton state of mind of the defendant at the time of the accident and specific proof of his willingness to expose others to the probability of injury." (*Pelletti v. Membrila* (1965) 234 Cal.App.2d 606, 612-13.)

In this case Plaintiff alleged that Defendant rear-ended Plaintiff while she was stopped at a red-light on a freeway off ramp. (¶2.) Plaintiff also alleges Defendant drove "after he got extremely inebriated" and that

he was traveling "in excess of 20 to 30 miles an hour at approximately 8:16 p.m. on February 17, 2014" and that Defendant "proceeded to flee from the scene." (¶12.) These allegations are sufficient to plead a claim for punitive damages under *Taylor* and Civil Code section 3294 as against Defendant Drew Christian.

However, there is no allegation that Christian was a managing agent, director or officer of Defendant corporation or that a managing agent, director or officer authorized or ratified his conduct. Thus the motion must be granted with respect to the punitive damages alleged against Defendant Drew Christian Construction, Inc.

The complaint does not allege liquidated damages and the damages are not otherwise ascertainable or capable of being made certain by a specific date. Thus the claim for prejudgment interest is stricken.

Clerk to give notice.